IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

KATE HOPPER,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. _______________
	)	
SARAH TERES	)	
	)	
and	)	
	)	
MOTHERWORDS, LLC,	)	
	)	
Defendants	)	

COMPLAINT

1. Plaintiff Kate Hopper ("Plaintiff") is an individual residing in the State of Minnesota, at 2832 37th Avenue South, Minneapolis, MN 55406.

2. Defendant Sarah Teres ("Teres") is an individual who, on information and belief, resides in the Commonwealth of Massachusetts at 30 Juniper Road, Andover, MA 01810.

3. On information and belief, Defendant Motherwords, LLC is a limited liability corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal place of business at 30 Juniper Road, Andover, MA 01810.

4. Teres and Motherwords, LLC shall be referred to collectively herein as "Defendants."

NATURE OF THIS ACTION

5. This is an action for trademark infringement and unfair competition under the Trademark Act of 1946, as amended (the Lanham Act, 15 U.S.C. §1051 et seq.).

6. This action arises from Defendants' use and proposed continued use of the trademark MOTHERWORDS, in violation of Plaintiff's own superior rights in the trademark MOTHER WORDS.

7. As set forth more fully below, Plaintiff alleges that Defendants have violated Plaintiff's intellectual property rights by unlawfully adopting and using a trademark and domain names which are essentially identical to the trademark owned by Plaintiff, for use in connection with goods and services which are in some cases identical to those offered by Plaintiff and in other cases closely related to those offered by Plaintiff. Defendants continue to engage in their illegal behavior even after being made aware of Plaintiff's superior right to use of the MOTHER WORDS trademark in connection with such goods and services and after being asked to cease and desist such unlawful behavior.

JURISDICTION AND VENUE

8. This Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338 and 15 U.S.C. §1121.

9. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. §1332 because the parties are diverse and because the value of the matter in controversy is in excess of $75,000.

10. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1338(b) and also to 28 U.S.C. §1367 over Plaintiff's state law claim.

11. This Court has personal jurisdiction over Defendant Teres because, on information and belief, she has engaged in a pattern of commercial and other activity in the State of Minnesota and because several of the willful actions alleged herein took place in Minnesota.

12. This Court has personal jurisdiction over Defendant Motherwords, LLC, because, on information and belief, Defendant Motherwords, LLC has engaged in a pattern of commercial activity in the State of Minnesota, and because several of the willful actions alleged herein took place in Minnesota.

13. Venue is appropriate in this District pursuant to 28 U.S.C. §1391 because, inter alia, the facts giving rise to the acts or omissions alleged herein took place at least in part in this District and/or because all defendants are subject to personal jurisdiction in this District.

BACKGROUND FACTS

Plaintiff and MOTHER WORDS

14. Plaintiff is an author who, although based in the Twin Cities, enjoys a readership throughout the country and internationally; her work appears in publications such as the *StarTribune*, *Minnesota Parent* magazine, and the *New York Times*, as well as in several online forums, including her personal blog.

15. Plaintiff also is an educator who has taught writing and editing skills to hundreds of students in the U.S. and elsewhere; Plaintiff's educational services are offered in various settings, including as classroom courses, intensive weekend retreats, online seminars, and one-on-one personal instruction.

16. In June, 2006, Plaintiff taught a short course at The Loft Literary Center ("The Loft"), a Minneapolis-based literary organization, to students interested in writing about parenthood, pregnancy and childbirth, and child rearing.

17. Plaintiff was dissatisfied with the name under which the June, 2006 course was offered, and so in July, 2006, she presented a proposal to The Loft for a new, similar course to be offered under the trademark MOTHER WORDS.

18. Plaintiff and The Loft quickly reached agreement on contractual terms governing the proposed MOTHER WORDS seminar, and Plaintiff immediately began promoting the course to prospective students under the trademark MOTHER WORDS.

19. In November, 2006, The Loft distributed a course catalog to thousands of prospective students advertising Plaintiff's new course and identifying it under the trademark MOTHER WORDS.

20. In December, 2006, Plaintiff launched a new Web site on which she began intensive promotion of the course using the MOTHER WORDS trademark.

21. In January, 2007, Plaintiff began actual teaching of the MOTHER WORDS writing course, which she has done continuously since then, both under the auspices of The Loft and otherwise.

22. Also in January, 2007, Plaintiff began publishing an online, interactive blog concerning subjects similar to those discussed in her writing instruction courses; the blog prominently features Plaintiff's MOTHER WORDS trademark, and in addition to other content, the blog contains extensive promotion of Plaintiff's MOTHER WORDS course, readings and instructional services.[1]

23. Plaintiff has published the blog continuously since January, 2007, and it has been the subject of tens of thousands of page-views and the recipient of thousands of reader comments.

Plaintiff's Trademark Rights

24. Plaintiff owns United States trademark application serial number 85/154,283 for the trademark MOTHER WORDS for use in connection with "Educational and entertainment services, namely, providing classes, seminars, retreats, readings, individual instruction, and a

[1] Plaintiff's blog may be found at www.motherswhowrite.blogspot.com/.

blog concerning the subjects of writing, parenthood, books, marriage and culture." See Exhibit A (copy of a print-out from the United States Patent & Trademark Office's TESS and TARR databases showing the particulars of the MOTHER WORDS application.)

25. Plaintiff also owns extensive common law rights in the MOTHER WORDS trademark, which she has used openly and continuously in interstate commerce in connection with offering educational services and entertainment services since at least as early as October, 2006.

Defendants' Infringing Activities

26. On April 14, 2007, Defendant Teres filed an application to register the trademark MOTHERWORDS for use in connection with the following goods and services: "General feature magazines" and "Magazine publishing" (the "Teres Application").

27. The Teres Application claimed "intent to use" the MOTHERWORDS trademark as the basis for the filing.

28. In connection with prosecution of the Teres Application, Teres subsequently stated under oath to the Patent and Trademark Office that she was using the MOTHERWORDS trademark in commerce, both in connection with general feature magazines and in connection with providing magazine publishing services, and further stated that all such use had begun at least as early as May 15, 2007; on information and belief, at the time Teres made these statements to the Patent and Trademark Office, they were not true.[2]

29. On information and belief, Defendant Teres formed Defendant Motherwords, LLC (the "LLC") as a Massachusetts limited liability company on June 8, 2007; at all times subsequent thereto, Teres apparently has served as the LLC's sole manager and member.

[2] On April 15, 2008, the Patent and Trademark Office granted registration no. 3,412,473 to the Teres Application.

30. In organizing the LLC with the Office of the Massachusetts Secretary of the Commonwealth, Teres described the general character of the entity's activities as follows:

> MOTHERWORDS IS AN ONLINE MAGAZINE, BLOG, BOOKS SERIES [*sic*], AND CONSULTING COMPANY THAT PROVIDES EDUCATIONAL, RESEARCH, AND ENTERTAINMENT, INFORMATION AND INSTRUCTION FOR BRANDS, COMPANIES AND INDIVIDUALS. COUPLED WITH THE ABOVE, ALSO OFFERING CLASSES, SEMINARS, RETREATS, READINGS, CONCERNING MOTHERHOOD, WOMEN'S ISSUES, BIRTH, PARENTING, MARRIAGE, CULTURE AND HUMOR IN HAVING CHILDREN.

31. The Patent and Trademark Office's on-line databases of trademark records do not evidence any assignment or other transfer of trademark rights from Teres to the LLC.

32. On information and belief, Defendants eventually published six issues of a printed, paper magazine using the name and trademark MOTHERWORDS (the "Magazine").

33. On information and belief, the cover of the first issue of the Magazine bore the date "January/February 2008" and the final issue of the Magazine bore the date "November/December 2008."

34. On information and belief, at no time have Defendants performed or provided "magazine publishing" services on behalf of any third party.

35. On information and belief, Defendants own and control the domain www.motherwords.com, where Defendant Teres has published and posted the following statements on a Web page:

> Motherwords was a glorious, glossy, colorful and amazing magazine launched in January of 2008.
>
> […]
>
> Unfortunately, because my mother died, AND due to the economic downturn you've all heard about, AND because no one thinks print is worth anything anymore, Motherwords, in it's [*sic*] former incarnation was not to be.

> […]
>
> So, until I can find a way to make Motherwords the proper magazine it should be, you're going to have to make due [*sic*] with MY stories.[3]

36. On information and belief, Defendants no longer engage in offering either "general feature magazines" or "magazine publishing" services under the trademark MOTHERWORDS.

37. On information and belief, on or about August 3, 2010, Defendant Teres began publishing an online, interactive blog concerning motherhood, parenting, child-rearing and other subjects using the trademark MOTHERWORDS.

Defendants' Communications with Plaintiff and Others

38. On September 26, 2007, Defendant Teres, apparently having just learned of Plaintiff's educational services and blogging activities being conducted under the MOTHER WORDS trademark, e-mailed Plaintiff, stating in part that "As I mentioned I am the publisher of Motherwords magazine, it would be great to get submissions from you and your students since obviously we are doing the same things."

39. After Plaintiff responded in an encouraging manner, Teres e-mailed Plaintiff again on September 27, 2007, stating "Thanks so much and thank you for your support!," further stating that the Magazine already had subscribers in Minnesota, and then soliciting written submissions of proposed articles for the Magazine from Plaintiff and from Plaintiff's students.

40. On information and belief, no further communication occurred between Defendants and Plaintiff until October, 2010, when Teres began a pattern of harassing communications intended to intimidate Plaintiff and discourage her exercise of her trademark rights.

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[3] See http://motherwords.com/about/.

41. In October, 2010, on information and belief, Teres contacted The Loft and demanded Plaintiff's personal contact information under a false pretext.

42. On information and belief, upon not being given Plaintiff's personal contact information by The Loft, Teres threatened to subpoena The Loft for same.

43. In October, 2010, on information and belief, Teres then contacted a colleague of Plaintiff, again seeking Plaintiff's personal contact information.

44. In October, 2010, Teres contacted Plaintiff by telephone and demanded that Plaintiff cease and desist her teaching activities using the MOTHER WORDS trademark and also cease and desist offering an online blog using the MOTHER WORDS trademark; as the basis for this demand, Teres cited her alleged rights to the MOTHERWORDS trademark.

COUNT 1

Trademark Infringement; False Designation of Origin, False Description, False Representation Under the Lanham Act, 15 U.S.C. § 1125(a)

45. Plaintiff realleges and incorporates by reference the allegations above.

46. As noted above, Plaintiff's MOTHER WORDS trademark is the subject of a pending application for registration at the United States Patent & Trademark Office, and Plaintiff owns extensive common law trademark rights arising out of her lengthy, open and continuous use of that trademark in connection with providing educational and entertainment services, namely, providing classes, seminars, retreats, readings, individual instruction, and a blog concerning the subjects of writing, parenthood, books, marriage and culture.

47. Plaintiff has used the MOTHER WORDS trademark continuously and openly since at least as early as October, 2006, to identify herself as the source of such services and to distinguish such services from the services and goods offered by others.

48. Plaintiff has prominently displayed her MOTHER WORDS trademark on promotional and explanatory materials as well as on other materials connected to the offering of her services, and also has authorized third parties to display that trademark in connection with promoting Plaintiff's services.

49. Plaintiff's MOTHER WORDS trademark, and the goodwill associated with it in the United States and elsewhere, are of great and incalculable value.

50. Without Plaintiff's authorization or consent, and having knowledge of Plaintiff's activities under and prior rights in the MOTHER WORDS mark, Defendants have engaged activities in or affecting interstate commerce under the infringing mark MOTHERWORDS which are offered to the consuming public in direct competition with Plaintiff.

51. Defendants' use of the MOTHERWORDS trademark in connection with offering an on-line blog and in conducting other on-line activities is likely to cause and, on information and belief, actually is causing confusion, mistake and deception among the general consuming public.

52. Defendants' unauthorized use of the infringing mark on or in connection with their own goods and services was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff.

53. Defendants have used and willfully continue to use the infringing mark with the intent to confuse, mislead or deceive customers, purchasers and members of the general public as to the origin, source, sponsorship or affiliation of Defendants' products and services, and with the intent to divert consumers away from Plaintiff's services.

54. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable MOTHER WORDS trademark, as well as related other damages.

55. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' actions unless this Court enjoins Defendants from such business practices.

COUNT 2

Violation of Minnesota Unlawful Trade Practices Act (Minn. Stat. 325D.44 *et seq.*)

56. The allegations set forth in paragraphs 1 through 55 above are incorporated by reference.

57. At all relevant times, Plaintiff and Defendants have been engaged in the conduct of trade and commerce in the State of Minnesota, and Defendants' actions constituting unlawful trade practices, unfair competition and deceptive practices have taken place in part within the State of Minnesota.

58. On information and belief, Defendants contracted with Minnesota residents concerning subscriptions to the Magazine and also contracted with at least one Minnesota resident concerning publication in the Magazine of an article written by that resident; Defendant Teres also has repeatedly contacted Minnesota residents and The Loft, a Minnesota non-profit corporation, concerning the matters described above.

59. By their conduct as set forth above, Defendants have willfully or knowingly engaged in unlawful, unfair and deceptive acts and practices in violation of Minn. Stat. 325D.44 *et seq*.

60. Defendants have unfairly competed with Plaintiff as alleged herein with the intent to deceive the consuming public into believing the goods and services offered by Defendants are provided by, approved by, sponsored by or affiliated with Plaintiff.

61. As a result, Plaintiff has suffered harm and damages, including a loss of money or property, for which Defendants are liable. Plaintiff has no sufficient remedy at law because

money damages alone would not adequately compensate Plaintiff for the harm it has suffered, and, unless this Court acts to enjoin Defendants, will continue to suffer.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants on all counts, granting Plaintiff the following forms of relief:

(1) That Plaintiff's rights in the trademark MOTHER WORDS be adjudged valid and willfully infringed by Defendants in violation of 15 U.S.C. §1125(a).

(2) That Defendants be adjudged to have willfully violated the provisions of 15 U.S.C. §1125(a) and/or Minn. Stat. 325D.44 *et seq.* by using a false designation of origin and causing misunderstanding as to the origin of their goods and services.

(3) That this Court issue an order directing the U.S. Commissioner for Trademarks to cancel or amend Defendant Teres' U.S. trademark registration number 3,412,473, on grounds of fraud and/or non-use, as this Court sees fit, per 15 U.S.C. §1119.

(4) That Defendants, their agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined from:

(a) directly or indirectly using the term MOTHERWORDS, or any other trademark, word, device, domain name or name similar to MOTHER WORDS which is likely to cause confusion or mistake or to deceive, in commerce;

(b) offering goods or services for sale, license, or otherwise, to third parties in conjunction with the MOTHERWORDS service mark or any confusingly similar mark, including but not limited to Plaintiff's mark MOTHER WORDS;

(c) unfairly competing with Plaintiff in any manner whatsoever; and

(d) causing a likelihood of confusion or injuries to Plaintiff's business reputation and goodwill.

(5) That Defendants be directed to file with this Court and serve on Plaintiff within thirty (30) days after the service of the injunction a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction.

(6) An order directing Defendants to destroy all existing materials bearing the mark MOTHERWORDS or any similar mark, word or name.

(7) An order directing Defendants to transfer their registrations for the domain names <www.motherwords.com>, <www.motherwords.org>, and any additional confusingly similar domain names, to Plaintiff.

(8) Damages, including Defendants' profits and the actual damages suffered by Plaintiff as a result of Defendants' acts of infringement and unfair competition.

(9) Treble damages on Plaintiff's claims under the Lanham Act and the Minnesota unfair competition statute.

(10) Attorneys' fees on Plaintiff's claims under the Lanham Act and the Minnesota unfair competition statute.

(11) Interest.

(12) Costs.

(13) Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

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Dated: January 26, 2011